



46 CFR Parts 502, 503, 520, 530, 535, 540, 550, 555, and 560

[Docket No. FMC-2023-0009]

RIN: 3072-AC96

Update of Existing FMC User Fees

AGENCY: Federal Maritime Commission

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Maritime Commission (Commission) is updating its current user fees and amending the relevant regulations to reflect these updates. The direct final rule would increase some fees to reflect increases in salaries of employees assigned to certain fee-generating services. For one service, the rule would lower fees because less-senior employees are assigned to the fee-generating activity. No substantive changes to the underlying regulations are included in this rulemaking; only changes to the user fee amounts.

DATES: The rule is effective without further action on [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless significant adverse comments are filed prior to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comments are received, the Commission will publish a timely withdrawal of the rule in the Federal Register no later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by using the Federal eRulemaking Portal at www.regulations.gov, under Docket No. FMC-2023-0009, Update of Existing FMC User Fees Direct Final Rule. Please refer to the “Public Participation” heading under the

SUPPLEMENTARY INFORMATION section of this notice for detailed instructions on how to submit comments, including instructions on how to request confidential treatment and additional information on the rulemaking process.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523-5908; Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes agencies to establish charges (i.e., user fees) for services and benefits that they provide to specific recipients. Under the IOAA, charges must be fair and based on the costs to the Government, the value of the service or thing to the recipient, the public policy or interest served, and other relevant facts. The IOAA also provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in Office of Management and Budget (OMB) Circular A-25, *User Charges* (revised July 8, 1993).

Under OMB Circular A-25, fees must be established for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. OMB Circular A-25 further provides that, generally, user fees must be sufficient to recover the full cost to the government for providing the service, resource, or good. Agencies are advised to determine or estimate costs based on the best available records in the agency and to ensure that cost computations cover the direct and indirect costs to the agency of providing the service. OMB Circular A-25 also states that agencies are permitted to set user fees below costs if conditions justify the exception.

OMB Circular A-25 also directs agencies to review biennially: (1) user charges for agency programs to assure that existing charges are adjusted to reflect unanticipated changes in costs or market values; and (2) all other agency programs to determine whether fees should be assessed. The Commission last reviewed and updated its user fees in 2020. 85 FR 72574 (Nov. 13, 2020).

II. Fee Adjustments

The Commission has reviewed its data on the time and cost involved in providing particular services to arrive at the updated direct and indirect labor costs for those services. As part of its assessment, the Commission utilized salaries of Full Time Equivalents (FTEs)

assigned to fee-generating activities to identify the various direct and indirect costs associated with providing such services. Direct labor costs include clerical and professional time expended on an activity. Indirect labor costs include labor provided by bureaus and offices that provide direct support to the fee-generating offices in their efforts to provide services and include managerial and supervisory costs associated with providing a particular service. Other indirect costs include Government overhead costs, such as fringe benefits and other wage-related Government contributions contained in OMB Circular A-76, *Performance of Commercial Activities* (revised May 29, 2003) and office general and administrative expenses.¹ The sum of these indirect cost components gives an indirect cost factor that is added to the direct labor costs of an activity to arrive at the fully distributed cost. A more detailed description of the Commission's methodology has been included in the docket.

The Commission is increasing some fees to reflect increased costs relating to FTEs assigned to certain fee-generating services. For some services, an increase in processing or review time may account for all or part of the increase in the amount of the fees. For one service, the Commission is decreasing fees because less-senior employees are assigned to the fee-generating activity. No substantive changes to the underlying regulations are included in this rulemaking; only changes to the user fee amounts.

The Commission is including two supporting documents providing detailed information on the updated user fee calculations in the docket. The first document shows the direct and indirect costs for each service for which a fee is assessed based on FY 2022 cost data. The second document compares the current fee amounts established in 2020 with the updated fee amounts reflecting the current costs, showing the percentage increase or decrease and change in dollar amount.

¹ OMB Circular A-76 lists the following indirect labor costs: Leave and holidays, retirement, worker's compensation, awards, health and life insurance, and Medicare. General and administrative costs are expressed as a percentage of basic pay. These include all salaries and overhead such as rent, utilities, supplies, and equipment allocated to Commission offices that provide direct support to fee-generating offices such as the Office of Information Technology, Office of Human Resources, Office of Budget and Finance, and the Office of Management Services.

A. Significant Change in User Fees

The Commission briefly describes below significant changes in user fees and changes that result in more than a 10 percent increase or decrease to a particular fee.

1. General Increases

For the 2020 Direct Final Rule Updating User Fees, the Commission used FY 2019 cost data, including FY 2019 salaries. Despite the fact that the 2022 update to user fees is occurring two years later, the Commission is using salary and cost data from FY 2022 to provide the most precise estimate of costs associated with user fees consistent with OMB Circular A-25. This three-year gap contributes to a significant increase in fees. Further, during this three-year period, inflation has raised salaries as well as overhead. Many of the fee increases of more than 10 percent are simply due to updating fees to reflect current costs.

2. Licensing, Registration, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries (Part 515)

When the Commission issued the last update to user fees in 2020, the rule noted that the Commission was in the process of transitioning from a paper application process to an electronic process for processing Ocean Transportation Intermediary applications. The Commission also noted that the fee for electronic applications was not modified as the system was not operational, and the costs could not be evaluated. *See* 85 FR 72574. The Commission has completed the migration to an electronic application and now updates the user fees for Part 515 through this rule to reflect the true cost to the agency of providing this service.

3. Clerical Errors on Service Contracts (Part 530)

The Commission has previously provided a service to the public of correcting clerical or administrative errors with service contracts. The Commission no longer provides this service. The Commission has set the fee for this service at \$0 and will address this regulation in a future rule.

III. Public Participation

How do I prepare and submit comments?

You may submit comments by using the Federal eRulemaking Portal at www.regulations.gov, under Docket No. FMC-2023-0009, Update of Existing FMC User Fees Direct Final Rule. Please follow the instructions provided on the Federal eRulemaking Portal to submit comments.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If you would like to request confidential treatment, pursuant to 46 CFR 502.5, you must submit the following, by email, to secretary@fmc.gov:

- A transmittal letter that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page.
- A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page and must clearly indicate any information withheld.

Will the Commission consider late comments?

The Commission will consider all comments received before the 11:59 EST on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at www.regulations.gov, under Docket No. FMC-2023-0009, Update of Existing FMC User Fees Direct Final Rule.

IV. Rulemaking Analyses and Notices

Administrative Procedure Act

The Commission expects the user fee updates to be noncontroversial. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), a final rule may be issued without notice and comment when the agency for good cause finds (and incorporates the finding and a brief statement of the need) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. This rule updates the user fee amounts for various services provided by the Commission based on a review of the costs to provide these services. This rule makes no substantive changes to the Commission's regulations nor does it affect any filing or other requirement. Accordingly, the Commission has determined that providing an opportunity for comment prior to publication of this direct final rule is unnecessary under 5 U.S.C. 553(b)(B).

This rule will become effective on the date listed in the DATES section unless the Commission receives significant adverse comments within the specified period. The Commission recognizes that parties may have information that could impact the Commission's views and intentions with respect to the revised regulations, and the Commission intends to consider any comments filed. The Commission will withdraw the rule by the date specified in the DATES section if it receives significant adverse comments.

We note that the scope of the rulemaking is limited to the amounts charged for Commission services, and any substantive changes to the underlying regulations governing those services or related requirements would be outside this scope. Accordingly, comments on the underlying regulations and related requirements will not be considered adverse. Filed comments that are not adverse may be considered for modifications to the Commission's regulations at a future date. If no significant adverse comments are received, the rule will become effective without additional action by the Commission.

Congressional Review Act

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish a FRFA, however, for the following types of rules, which are excluded from the APA’s notice-and-comment requirement: interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

As discussed above, the Commission has for good cause determined that notice and comment in this case is unnecessary. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare a FRFA.

National Environmental Policy Act

The Commission’s regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This rule updates user fees for services that fall within various categorical exclusions, and no environmental assessment or environmental impact statement is required. In particular, rulemakings related to the following fall under categorical exclusions: issuance, modification, denial and revocation of ocean transportation intermediary

licenses under part 515 (§ 504.4(a)(1)); certification of financial responsibility of passenger vessels under part 540 (§ 504.4(a)(2)); promulgation of procedural rules under part 502 (§ 504.4(a)(4)); receipt of service contracts (§ 504.4(a)(5)); consideration of special permission applications under part 520 (§ 504.4(a)(6)); consideration of agreements (§ 504.4(a)(9)–(13), (30)–(35)); action taken on special docket applications under § 502.271 (§ 504.4(a)(19)); and action regarding access to public information under part 503 (§ 504.4(a)(24)).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, “Civil Justice Reform,” to minimize litigation, eliminate ambiguity, and reduce burden.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of a rule. 5 CFR 1320.11. This rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects

46 CFR part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR part 503

Classified information, Freedom of Information, Privacy, Sunshine Act.

46 CFR part 515

Licensing, Registration, and Surety bonds for Maritime carriers.

46 CFR part 520

Freight, Intermodal transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR part 530

Freight, Maritime carriers, Report and recordkeeping requirements.

46 CFR part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR part 550

Administrative practice and procedure, Maritime carriers.

46 CFR part 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR part 560

Administrative practice and procedure, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission amends 46 CFR parts 502, 503, 515, 520, 530, 535, 540, 550, 555, and 560 as follows:

PART 502-RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561-569, 571-584; 591-596; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C., 40103-40104, 40304, 40306, 40501-40503, 40701-40706, 41101-41109, 41301-41309, 44101-44106, 46105; 5 CFR part 2635.

2. Amend § 502.62 by revising paragraph (a)(6) to read as follows:

§ 502.62 Private party complaints for formal adjudication.

(a) * * *

(6) *Filing fee.* The complaint must be accompanied by remittance of a \$387 filing fee.

* * *

3. Amend § 502.93 by revising paragraph (a)(3) to read as follows:

§ 502.93 Declaratory orders and fee.

(a) * * *

(3) Petitions must be accompanied by remittance of a \$450 filing fee.

* * *

4. Amend § 502.94 by revising paragraph (b) to read as follows:

§ 502.94 Petitions-general and fee.

* * *

(b) Petitions must be accompanied by remittance of a \$450 filing fee. [Rule 94.]

5. Amend § 502.271 by revising paragraph (d)(5) to read as follows:

§ 502.271 Special docket application for permission to refund or waive freight charges.

* * *

(d) * * *

(5) Applications must be accompanied by remittance of a \$187 filing fee.

* * *

6. Amend § 502.304 by revising the last sentence of paragraph (b) to read as follows:

§ 502.304 Procedure and filing fee.

* * *

(b) * * * Such claims must be accompanied by remittance of a \$176 filing fee.

* * * *

PART 503-PUBLIC INFORMATION

7. The authority citation for part 503 continues to read as follows:

Authority: 5 U.S.C. 3331, 552, 552a, 552b, 553; 31 U.S.C. 9701; 46 U.S.C. 46103; E.O. 13526 of January 5, 2010, 75 FR 707, 3 CFR, 2010 Comp., p. 298, sections 5.1(a) and (b).

8. Amend § 503.50 by revising paragraphs (c)(1)(i) and (ii), the first sentence of paragraph (c)(2), and paragraphs (c)(3)(ii) and (iii), (c)(4), and (d) to read as follows:

§ 503.50 Fees for services.

* * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of \$41 per hour and by professional/executive personnel at a rate of \$82 per hour.

(ii) Unless an exception provided in paragraph (b)(2) of this section applies, the minimum charge for record search is \$41.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.33 must be assessed to recover full costs at the rate of \$109 per hour. * * *

(3) * * *

(i) * * *

(ii) By Commission personnel, at the rate of ten cents per page (one side) plus \$41 per hour.

(iii) Unless an exception provided in paragraph (b)(2) of this section applies, the minimum charge for copying is \$8.

* * * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$93 for each certification.

(d) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of \$195 pursuant to § 502.27 of this chapter.

9. Amend § 503.69 by revising paragraph (b)(2) to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$93 for each certification.

* * * * *

**PART 515-LICENSING, REGISTRATION, FINANCIAL RESPONSIBILITY
REQUIREMENTS AND GENERAL DUTIES FOR OCEAN TRANSPORTATION
INTERMEDIARIES**

10. The authority citation for part 515 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 40102, 40104, 40501-40503, 40901-40904, 41101-41109, 41301-41302, 41305-41307, 46105; Pub. L. 105-383, 112 Stat. 3411; 21 U.S.C. 862.

11. Amend § 515.5 by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 515.5 Forms and Fees.

* * * * *

(c) * * *

(2) * * *

(i) Application for new OTI license as required by § 515.12(a): Filing \$1,304.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): Filing \$943.

PART 520-CARRIER AUTOMATED TARIFFS

12. The authority citation for part 520 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C., 40101-40102, 40501-40503, 40701-40706, 41101-41109, 46105.

13. Amend § 520.14 by revising the last sentence of paragraph (c)(1) to read as follows:

§ 520.14 Special permission.

* * * * *

(c) * * *

(1) * * * Every such application must be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of \$394.

* * * * *

PART 530-SERVICE CONTRACTS

14. The authority citation for part 530 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C., 40301-40306, 40501-40503, 41307, 46105.

15. Amend § 530.10 by revising paragraph (c) introductory text to read as follows:

§ 530.10 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(c) *Corrections.* Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within one-hundred eighty (180) days of the contract's filing with the Commission, accompanied by remittance of a \$0 service fee, and must include:

* * * * *

PART 535-OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

16. The authority citation for part 535 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C., 40101-40104, 40301-40307, 40501-40503, 40901-40904, 41101-41109, 41301-41302, and 41305-41307, 46105.

17. Amend § 535.401 by revising paragraph (g) to read as follows:

§ 535.401 General requirements.

* * * * *

(g) The filing fee is \$3,980 for new agreements and \$4,637 for any agreement modifications requiring Commission review and action; \$1,174 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.27(e) of this chapter); \$343 for carrier exempt agreements; and \$96 for terminal exempt agreements.

* * * * *

PART 540-PASSENGER VESSEL FINANCIAL RESPONSIBILITY

18. The authority citation for part 540 is revised to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; 46 U.S.C., 44101-44106, 46105.

19. Amend § 540.4 by revising paragraph (e) to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(e) An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of \$4,936. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of \$2,400. Administrative changes, such as the renaming of a vessel will not incur any additional fees.

* * * * *

20. Amend § 540.23 by revising the last two sentences of paragraph (b) to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of \$2,080. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of \$1,013.

* * * * *

PART 550-REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

21. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C.; sec. 19 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. 42101 and 42104-42109; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. 42301-42307, 46101-46108.

22. Revise § 550.402 to read as follows:

§ 550.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade must be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part must be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition must be accompanied by remittance of a \$450 filing fee.

PART 555-ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

23. The authority citation for part 555 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. 42301-42307).

24. Amend § 555.4 by revising the last sentence of paragraph (a) to read as follows:

§ 555.4 Petitions.

(a) * * * The petition must be accompanied by remittance of a \$450 filing fee.

* * * *

**PART 560- ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS
OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS**

25. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C., 40104, and 41108(d); sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. 42301-42307), 46105.

26. Amend § 560.3 by revising the last sentence of paragraph (a)(2) to read as follows:

§ 560.3 Petitions for relief.

(a) * * *

(2) * * * The petition must be accompanied by remittance of a \$450 filing fee.

* * * *

By the Commission.

William Cody
Secretary

Billing Code: 6730-02

[FR Doc. 2023-05764 Filed: 3/20/2023 8:45 am; Publication Date: 3/21/2023]